

Matter of Brooks v Capital Dist. Transp. Auth.
2025 NY Slip Op 35553(U)
January 27, 2025
Supreme Court, Rensselaer County
Docket Number: Index No. EF2024-278144
Judge: Richard J. McNally, Jr.
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

At a IAS Term of the Rensselaer County
Supreme Court, held in and for the County
of Rensselaer, in the City of Troy, New
York, on the 29th day of January, 2025.

PRESENT: HON. RICHARD J. McNALLY, JR.
JUSTICE

STATE OF NEW YORK
SUPREME COURT COUNTY OF RENSSELAER

In the Matter of the Application of
BARRY BROOKS,

Petitioner,

For an Order granting permission to file a
Notice of Claim *nunc pro tunc*

-against-

DECISION & ORDER
Index No. EF2024-278144

CAPITAL DISTRICT TRANSPORTATION
AUTHORITY, THE CITY OF TROY, and
THE COUNTY OF RENSSELAER,

Respondents.

APPEARANCES:	Rourk Mulderig, Esq. HACH & ROSE, LLP 112 Madison Avenue, 10th Floor New York, New York 10016
	Joshua David Lindy FitzGerald Morris Baker Firth PC 68 Warren Street Glens Falls, NY 12801

MCNALLY, J.

Petitioner moves pursuant to General Municipal Law 50-e § [5], seeking leave to serve a late notice of claim on respondents. Respondents opposes the motion. For the reasons stated below, the motion is granted, with the dismissal of The County of Rensselaer and The City of Troy as parties to this matter.

This litigation arises from an incident in which petitioner was a passenger on a bus owned and operated by the Capital District Transportation Authority (hereinafter “CDTA”). Said bus was traveling on Hoosick Street on December 8, 2023, at approximately 9:30AM when an accident occurred in which it came into contact with another vehicle. Petitioner sustained injuries as a result of the crash, and alleges negligence on the part of respondents.

Service of a notice of claim is required in an action against respondents as a public corporation (*see* General Construction Law § 66 [1]). Such notices are governed by the provisions of section 50-e of the General Municipal Law which provides that the notice of claim must ordinarily be served within 90 days after the cause of action accrues (*see* General Municipal Law § 50-e [5]). “A party seeking leave to serve a late notice of claim must make an application to the court for that relief, and the court, in its discretion, may extend the party’s time to serve a late notice” (*Wally G. v New York City Health & Hosps. Corp.*, 27 NY3d 672, 675 [2016] [citation omitted]). In deciding whether to permit a late filing of a notice of claim, the court “must consider certain statutory factors, including whether the respondent had actual knowledge of the essential facts constituting the claim, whether there exists a reasonable excuse for the delay in filing the notice of claim and whether the delay has caused substantial prejudice to any defense to the claim” (*Matter of Conger v Ogdensburg City School Dist.*, 87 AD3d 1254, 1254 [3d Dept 2011] [citations omitted]).

Here, petitioner contends he was incarcerated from January 31, 2024, until March 29, 2024, which prevented him from locating an attorney after his release. According to petitioner, this resulted in an untimely notice of claim. Respondent further contends that all three respondents undertook an investigation of the accident, including taking photographs, interviewing witnesses, and taking statements from the involved parties, all of which made them aware of the essential facts constituting the claim.

The issue with this, as is also contended by respondent County of Rensselaer, and this Court agrees, is that the CDTA is a New York State Public Benefit Corporation which provides public transportation within the capital district. The County of Rensselaer has no role or association with the CDTA, other than providing two members to sit on CDTA's board. Similarly, The City of Troy has no direct association with the CDTA. The only respondent named in the instant petition that would have direct knowledge of the essential facts constituting this claim would be the CDTA itself, which would have directed the investigation.

As such, this Court finds petitioner's delay to be with reasonable excuse, and without prejudice, however the respondents The County of Rensselaer and The City of Troy must be released from this matter, as they had no knowledge of the essential facts constituting the claim.

Accordingly, it is

ORDERED that plaintiff's petition to serve a late notice of claim is granted against respondent CDTA, and it is

ORDERED that respondents "The County of Rensselaer" and "The City of Troy" are dismissed as parties in this matter.

The Court has uploaded the original Decision and Order/Judgment to the case record in this matter as maintained on the NYSCEF website whereupon it is to be filed and entered by the Office of the Rensselaer County Clerk.

Counsel is not relieved from the applicable provisions of CPLR 2220 or the Uniform Rules of Supreme and County Courts § 202.5b [h] [2], insofar as it relates to service and notice of entry of the filed document upon all other parties to this special proceeding, whether accomplished by mailing or electronic means, whichever may be appropriate dependent upon the filing status of the party.

Uniform Rules of Supreme and County Courts § 202.5b [b] [2] [I] directs that service upon nonparticipating parties must be made in hard copy.

SO ORDERED!
ENTER

Dated: January 27, 2025
Troy, New York



RICHARD J. MCNALLY, JR.
Supreme Court Justice

Papers Considered:

NYSCEF Docketed Nos 1-9.